

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

05/24/2002

CLERK OF THE COURT  
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza  
Deputy

LC 2001-000839

FILED: \_\_\_\_\_

STATE OF ARIZONA

SUSAN J KAYLER

v.

MARY ELLEN KRUCZYNSKI

RICHARD D COFFINGER

DISPOSITION CLERK-CSC  
FINANCIAL SERVICES-CCC  
FOUNTAIN HILLS CITY COURT  
REMAND DESK CR-CCC

MINUTE ENTRY

FOUNTAIN HILLS CITY COURT

Cit. No. 0319692

Charge: A. DRIVERS LICENSE NOT IN POSSESSION  
B. FAILURE TO CONTROL SPEED TO AVOID ACCIDENT  
C. FAILURE TO STOP UPON STRIKING UNATT. VEH  
D. FALURE TO EXCHANGE INFORMATION AFTER ACC

DOB: 03/28/54

DOC: 05/28/01

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

05/24/2002

CLERK OF THE COURT  
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza  
Deputy

LC 2001-000839

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement since the time of oral argument on April 24, 2002. This decision is made within 30 days as required by Rule 9.8, Maricopa County Superior Court Local Rules of Practice. This Court has considered and reviewed the record of the proceedings from the Fountain Hills City Court, the Memoranda and arguments of counsel.

The only issues raised by Appellant concern her claim that Counts 3 and 4 are multiplicitous. In Counts 3 and 4, Appellant was charged with violating A.R.S. Section 28-664(A), Failing to Stop Upon Striking an Unattended Vehicle, a class 3 misdemeanor offense. Appellant was specifically charged with violating A.R.S. Section 28-664(A)(1) in Count 3 and with violating A.R.S. Section 28-664(A)(2) in Count 4.

In matters of statutory interpretation, the standard of review by an appellate court is *de novo*.<sup>1</sup> An appellate court must not reweigh the evidence presented to a trial court.<sup>2</sup>

In reviewing the trial judge's order denying Appellant's Motion to Dismiss and the judgment of guilt finding Appellant guilty of Counts 3 and 4, this Court is guided by general principles of statutory construction which require that this Court liberally construe a statute so as to effect the legislative intent and to promote justice.<sup>3</sup> A primary function of an appellate court is to determine the legislative intent and give effect to that legislative intent.<sup>4</sup>

A.R.S. Section 28-664 provides in paragraph A:

---

<sup>1</sup> In re: Kyle M., 200 Ariz. 447, 27 P.3d 804 (App. 2001); see also State v. Jensen, 193 Ariz. 105, 970 P.2d 937 (App. 1998).

<sup>2</sup> Id.

<sup>3</sup> See, A.R.S. Section 1-211.

<sup>4</sup> Calvert v. Farmers Insurance Co., 144 Ariz. 291, 697 P.2d 684 (1985).

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

05/24/2002

CLERK OF THE COURT  
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza  
Deputy

LC 2001-000839

(A) The driver of a vehicle that collides with a vehicle that is unattended shall immediately:

1. Stop.

2. Either:

(a) Locate and notify the operator or owner of the vehicle of the name and address of the driver and owner of the vehicle striking the unattended vehicle.

(b) In a conspicuous place in the vehicle struck, leave a written notice giving the name and address of the driver and of the owner of the vehicle doing the striking.

The State's position is that the crime described in subsection A (above) may be committed several different ways and that each of paragraphs 1 and 2 are independent means by which a person may commit the crime. However, this Court reads (A)(1) and (A)(2) as not independent means of committing the same crime, but rather, a list of requirements the statute requires of a driver of a vehicle that collides with a vehicle that is unattended. In other words, both subparagraphs (1) and (2) are necessary elements of the crime. Appellant's complaint that she has been subject to criminal prosecution and conviction twice for the one act appears to be well-founded.

IT IS THEREFORE ORDERED vacating the conviction for Count 4 in its entirety and dismissing that charge as being multiplicitous.

IT IS FURTHER ORDERED affirming Appellant's convictions for charges 1 (Drivers License Not in Possession), 2 (Failure to Control Speed to Avoid Accident), and 3 [Failure to Stop Upon Striking Unattended Vehicle in violation of A.R.S. Section 28-664(A)].

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

05/24/2002

CLERK OF THE COURT  
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza  
Deputy

LC 2001-000839

IT IS FURTHER ORDERED remanding this case back to the  
Fountain Hills City Court for all further and future proceedings  
in this case.